

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BLUEFIELD

JAMES WISSER,

Plaintiff,

v.

CIVIL ACTION NO. 1:13-3377

WEST VIRGINIA STATE POLICE,  
TROOPER D.C. GRAHAM, individually  
and in his official capacity, and  
TROOPER A.P. CHRISTIAN, individually  
and in his official capacity,

Defendants.

**MEMORANDUM OPINION AND ORDER**

Pending before the court is plaintiff's motion to substitute parties pursuant to Rule 25 of the Federal Rules of Civil Procedure. (Doc. No. 37). The defendants have not filed a response in opposition to this motion. For reasons stated below, plaintiff's motion to substitute parties is **GRANTED**.

On February 25, 2013, James Wisser filed suit against the West Virginia State Police and several of its employees, complaining that they had used excessive force against him while he was in custody. (Doc. No. 1). Nearly one year later, on February 15, 2014, Wisser died from injuries sustained in an unrelated motor vehicle accident. (Doc. No. 37-2 at 1). Following Wisser's death, on May 13, 2014, his counsel filed a

suggestion of death and a motion to substitute parties pursuant to Rule 25 of the Federal Rules of Civil Procedure. (Doc. No. 37). In his motion, the plaintiff seeks to substitute James Victor Wisser, the deceased's father and administrator of his estate. (Doc. No. 37 at 1; Doc. No. 37-2; Doc. No. 37-3).

Rule 25 of the Federal Rules of Civil Procedure provides that:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25(a)(1). Rule 25 does not impose a time limit for the substitution until "proper service of a suggestion of death [is commenced] upon the record." Fariss v. Lynchburg Foundry, 769 F. 2d 958, 963 (4th Cir. 1985). "[T]he suggestion of death is served in the same manner as the motion to substitute, [and] a party may be served through his attorney . . . ." Id. (citing Fed. R. Civ. P. 4(d)(1) (internal citations omitted)).


As stated above, plaintiff's counsel filed the suggestion of death on May 13, 2014. The motion to substitute was filed that same day and, accordingly, is timely.

Therefore, the motion to substitute parties pursuant to Rule 25 of the Federal Rules of Civil Procedure is **GRANTED**. The

Clerk is directed to send a copy of this Memorandum Opinion and Order to all counsel of record.

It is so ORDERED this 2nd day of June, 2014.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge